



MORGANTOWN PLANNING COMMISSION

February 11, 2016
6:30 PM
City Council Chambers

President:

Peter DeMasters, 6th Ward

Vice-President:

Carol Pyles, 7th Ward

Planning Commissioners:

Sam Loretta, 1st Ward

Tim Stranko, 2nd Ward

William Blosser, 3rd Ward

Bill Petros, 4th Ward

Mike Shuman, 5th Ward

Ken Martis, Admin.

William Kawecki, City Council

RESOLUTION 2016-01

"Bylaws and Policy Annexes 1 and 2"

WHEREAS, to gather pertinent information and concerns, safeguard a full airing of the issues involved, and ensure basic fairness, the Morgantown Planning Commission conducts a public hearing for each subdivision, site plan, zoning map amendment, and text amendment application; and,


WHEREAS, the Commission finds it necessary and prudent to establish policies concerning deadlines for submitting evidence supporting the granting or denial of an application and related procedures, use of electronic display, majority vote for official action, addressing unruly and disruptive behavior, and accordingly revising the pre-meeting announcement for regular and special meetings; and,

WHEREAS, it is the intent of the Commission to accordingly amend its Bylaws and Annexes as attached hereto.

NOW THEREFORE, BE IT RESOLVED, by the Morgantown Planning Commission that its Bylaws and Policy Annexes are hereby amended as attached hereto and shall become effective immediately upon adoption.

Adopted:

11 FEB 2016
Date



President, Morgantown Planning Commission



Secretary, Morgantown Planning Commission

Planning Department

Christopher Fletcher, AICP
Planning Director
389 Spruce Street
Morgantown, WV 26505
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CITY OF MORGANTOWN, WEST VIRGINIA
PLANNING COMMISSION BYLAWS

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ARTICLE II..... OFFICERS AND STAFF
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POLICY ANNEX 1 ORDER OF BUSINESS
POLICY ANNEX 2 GUIDANCE IN FAIRNESS AND IMPARTIALITY

Adopted: October 11, 2007
Amended: November 13, 2007
 April 8, 2010
 February 11, 2016

ARTICLE I – AUTHORIZATION

SECTION 1 – STATE CODE

The Morgantown Planning Commission was created as provided for in West Virginia State Code Chapter 8A, Article 2, as amended.

SECTION 2 – CITY CHARTER

The Morgantown Planning Commission was created as provided for in Article VI of the City Charter, Morgantown, West Virginia, as amended.

SECTION 3 – CITY CODE

The Morgantown Planning Commission was created as provided for in Article 1387 of the Planning and Zoning Code of the City of Morgantown, as amended.

ARTICLE II – OFFICERS AND STAFF

SECTION 1 – ELECTION

- (A) At its first regular meeting each calendar year, the Planning Commission shall elect from its members a President and Vice-President.
- (B) No member of the Commission shall be eligible for the office of President or Vice-President until the member has served on the Commission for at least one (1) year, unless no member shall have served a minimum of one (1) year. In such event, the President or Vice-President shall be selected from any of the Commission members.

SECTION 2 – PRESIDENT

- (A) The President shall preside at all regular and special meetings, public hearings, study sessions, field trips, and workshops of the Commission.
- (B) The President may call special meetings of the Commission as required or necessary.
- (C) The President shall transmit reports, plans, recommendations, and other documents from the Commission to the appropriate authorities or bodies.
- (D) The President shall act as spokesperson for the Commission.
- (E) The President shall automatically send a letter to the City Manager when any member fails to attend three (3) consecutive regular meetings or any five (5) regular meetings in a calendar year. The President may also include in the letter a request that the member be removed under City Council's procedures for the removal of members of the Planning Commission for inactivity, neglect of duty, or malfeasance. Said procedure should include provisions requiring that the person to be removed be provided with a written statement from the City Manager of the reasons for removal and an opportunity to be heard by the City Manager on the matter.

SECTION 3 – VICE-PRESIDENT

The Vice-President shall act as President of the Planning Commission during the absence or disability of the President.

SECTION 4 – TEMPORARY PRESIDENT

For the purpose of establishing a quorum for a meeting and in the absence of both the President and Vice-President, any member may call the meeting to order for the purpose of electing a temporary President by a simple majority of those present.

SECTION 5 – REPLACING OFFICERS

- (A) In the event of the death, disability, resignation, or removal of the President or Vice-President, the Commission shall elect one of its eligible members to complete the unexpired term.
- (B) A three-fifths majority of the total membership of the Commission may, at any regular meeting, remove the President or Vice-President from office, provided that a new election to fill the remaining term of office is immediately held.

SECTION 6 – SECRETARY

The Director of Development Services of the City of Morgantown, or designated representative, shall serve the Commission as Secretary. The Secretary shall perform such duties and functions as may be required from time to time by the Commission, including recording, maintaining and distributing the minutes of each meeting, and sending notices and agendas to members in a timely fashion. The Planning Division shall furnish professional and technical assistance to the Commission.

SECTION 7 – ATTORNEY

All questions of law shall be referred to the City Attorney, or designated representative, for advice and opinion.

ARTICLE III – MEETINGS

SECTION 1 – REGULAR MEETINGS

- (A) Regular meetings of the Commission shall be held on the second Thursday of the month at 6:30 PM. Whenever a legal holiday is the same day as a meeting, such meeting shall be canceled or scheduled for an alternate date and advertised in accordance with State regulations pertaining to Open Government Meetings. An alternate date may be selected when, in the opinion of the President, the regular date conflicts with a community event that may hinder public access, attendance, and/or participation. In such case, the alternate date shall be advertised in accordance with State regulations pertaining to Open Government Meetings.
- (B) The Commission shall establish rules and procedures pertaining to the order and conduct of its regular and special meetings. Regular and special meetings of the Commission shall be open to the public and minutes of its proceedings, showing the vote of each member

and records of its examinations and other official actions, shall be filed in the office of the Planning Division as a public record. For any matter under consideration, any person may submit written comments and if attending in person, may speak to the issue upon being recognized by the President after stating his/her name and address and the names of any persons on whose behalf they are appearing.

- (C) The Commission may hold an annual meeting for the review of its activities and accomplishments.
- (D) Regular meetings of the Commission shall be held in Council Chambers of City Hall, unless advertised differently.

SECTION 2 – SPECIAL MEETINGS

- (A) Special meetings may be called by the President or upon the written request of any two or more members.
- (B) Notice for a special meeting must be in writing, including the date, time, and place of the special meeting, and be sent to all members by the Secretary at least two (2) days before the special meeting.
- (C) Written notice of a special meeting is not required if the date, time, and place of the special meeting were set in a regular meeting.

SECTION 3 – QUORUM

- (A) The Commission must have a quorum to conduct a regular or special meeting. A majority of the members of the Commission shall constitute a quorum.
- (B) No action of the Commission is official unless authorized by a majority of the members present at a regular or properly called special meeting.

SECTION 4 – PARLIAMENTARY PROCEDURE

Roberts Rules of Order, current edition, shall be the parliamentary authority of the Commission's regular and special meetings.

SECTION 5 – EXECUTIVE SESSIONS

The Commission may hold an executive session closed to the public during a regular or special meeting to consider matters permissible in executive sessions pursuant to the laws of the State of West Virginia and the City of Morgantown Charter.

SECTION 6 – STUDY SESSIONS AND FIELD TRIPS

- (A) Study Sessions on specific matters for which public hearings are anticipated in the future may be called by the President or at the request of two or more members. Public notice for Study Sessions shall be given in the same manner as that required for public hearings. A record of the Study Session shall be entered into the minutes of the subsequent public hearing so that the record shall indicate that the Study Session was taken into

consideration as evidence. Public testimony may be barred or limited during study sessions to particular persons at the discretion of the President.

- (B) The Commission may take Field Trips to view property or for other purposes relevant to a public hearing or other matter under consideration. All Commission Field Trips shall be taken as part of a regular or special meeting and all interested persons shall be afforded the opportunity to be present to view the property and hear any reports or comments. A record of the Field Trip shall be entered into the minutes, so that the record shall indicate that the Field Trip was taken into consideration as evidence.

SECTION 7 – WORKSHOPS

- (A) Workshops for any purpose may be held at the discretion of the President or request of two or more members, by giving notice to all the members by phone, by personal delivery, by email, and/or by verbal comment during a regular or special meeting at least twenty-four (24) hours before the workshop. At least twenty-four (24) hours notice shall be given to the general public by posting such notice at City Hall and otherwise in conformance with West Virginia State Code. The Workshop call and notice shall specify the date, time, place, and purpose of the Workshop.
- (B) Workshops shall not be considered regular or special meetings and may not include the formal conduct of business, rendering decisions, or taking action for which the Commission is charged. Workshops are intended to serve as Commission training, public education, etc.

ARTICLE IV – REPORTS AND BUDGETS

- (A) The Secretary shall prepare and submit an Annual Report to the City Manager in the same manner as other departments of the City government concerning the operation of the Planning Commission and the status of planning within the City.
- (B) The Secretary shall prepare and submit an Annual Budget to the City Manager in the same manner as other departments of the City government and shall be limited in all expenditures to the provisions made therefore by City Council.
- (C) The Commission shall submit to Council such reports as may be requested and such other information as the Council may desire.

ARTICLE V – RETENTION OF FILES

- (A) The official records of the Commission shall include its bylaws, rules, regulations, minutes of meetings, resolutions, and its adopted reports, which shall be deposited with the office of the Planning Division and which shall be available for public inspection during customary office hours.
- (B) All applications and other matters coming before the Commission shall be filed in the office of the Planning Division in accordance with that office's general file system.

- (C) Original papers of all applications and other matters shall be retained for not less than five (5) years after date of application. Thereafter, such matters may be retained in digital format, along with other special matters as the Secretary deems essential, for permanent record.

ARTICLE VI – SEPARABILITY

The invalidation of any article or any section of any article shall not invalidate any other portion of these Bylaws.

ARTICLE VII –AMENDMENTS AND POLICY ANNEXES

- (A) These Bylaws may be amended by majority vote at any meeting of the Commission; provided that notice of said proposed amendment is given to each member in writing at least five (5) days prior to said meeting.
- (B) Policy Annexes that supplement these Bylaws may be adopted and amended by majority vote at any meeting of the Commission, provided that notice of said proposed amendment is given to each member in writing at least five (5) days prior to said meeting.

Adopted: 11 FEB 2016
Date



President, Morgantown Planning Commission



Secretary, Morgantown Planning Commission

CITY OF MORGANTOWN, WEST VIRGINIA
PLANNING COMMISSION BYLAWS

POLICY ANNEX 1
ORDER & CONDUCT OF BUSINESS

SECTION 1 NOTICE OF HEARINGS
SECTION 2 OPENING OF MEETINGS
SECTION 3 ORDER AND CONDUCT OF BUSINESS
SECTION 4 VOTING
SECTION 5 RECORDING OF MEETINGS
SECTION 6 RECOMMENDATIONS TO CITY COUNCIL

Adopted: October 11, 2007
Amended: November 13, 2007
 April 8, 2010
 February 11, 2016

SECTION 1 – NOTICE OF HEARINGS

- (A) Notice of time and place of any public hearing to be held by the Commission will be given by the Secretary, or designee, as required by State law and/or City Ordinance.
- (B) Notice of pending Commission consideration of site plan, zoning map amendment, and major subdivision petitions will be sent by the Secretary, or designee, to owners of property within 200 feet of the subject site for which a public hearing is held. Said notice will be mailed, not less than 15 days prior to the hearing date, to owners of record at the Monongalia County Courthouse.
- (C) An agenda will be prepared by the Secretary for each regular and special meeting and executive session of the Commission. The agenda will include the various matters of business as scheduled for consideration by the Commission.
- (D) Any petition or request may be withdrawn upon written notice to the Secretary, but no request shall be withdrawn after posting of hearing notice or legal advertisement published for notification and prior to the public hearing thereon without formal consent of the Commission.
- (E) Hearings on all matters on which a decision of the Commission is required shall be open to the public.
- (F) The applicant may appear on their own behalf, or may be represented by counsel or agent. Minor subdivision petitioners may request in writing that the Planning Division represent their application.

SECTION 2 – OPENING OF MEETINGS

- (A) The President will call the Commission to order and the Secretary shall record the members present and absent for all regular and special meetings.
- (B) The President will conduct meetings under Robert's Rules of Order, current edition, unless such rules are suspended by majority vote of the Commission or superseded by these Bylaws. In a conflict between these Bylaws and Robert's Rules of Order, these Bylaws will prevail.
- (C) The President will direct questions to the applicant or any person speaking, in order to bring out all relevant facts, circumstances, and conditions affecting the matter being considered, and then call for the questions from other members of the Commission and from the City Staff.
- (D) The President will read a statement for the benefit of the Commission, petitioners, and the public that describes the order, procedures, and conduct of the meeting (see Exhibit A – Pre-Meeting Announcement).

SECTION 3 – ORDER AND CONDUCT OF BUSINESS

- (A) The President will first call for the presentation of the staff report and report on any communications received.
- (B) The President will then call upon the applicant to present the petition and all evidence supporting the request.
- (C) The President will then call on those who are in support of the request or other matter being presented.

- (D) The President will then call on those who are opposed to the request or other matter being presented.
- (E) The President may then grant the petitioner the right of rebuttal to any arguments presented by the opposition.
- (F) Each side will proceed without interruption by the other, and all arguments and pleadings will be addressed to the Commission. No questioning or argument between individuals will be permitted.
- (G) The Commission may continue the hearing up to ninety (90) days on any application or other matter for which the applicant fails to appear unless the applicant has requested in writing that the Commission act without the applicant being present at the hearing; provided, however, the Commission may hear those persons requesting to speak in response to the notice of hearing.
- (H) Witnesses shall not ordinarily be sworn unless a specific request therefore is made and granted prior to the taking of any testimony. The President may, upon request of any member of the Commission or upon the advice of the City Attorney, require that all witnesses be sworn before giving testimony in a particular matter. Witnesses may be sworn as a group prior to the presentation of the staff report.
- (I) A Commissioner who is absent from any portion of a hearing conducted by the Commission may vote on the matter at the time it is acted upon by the Commission; provided that s/he has listened to the tape recording made, or reviewed the minutes of, any portion of the hearing from which s/he was absent, and states for the record prior to voting that s/he has read the staff report and is familiar with it.
- (J) The hearing need not be conducted according to technical, judicial Rules of Evidence. Any relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- (K) The President may exclude irrelevant or redundant testimony and may make such other rulings as may be necessary for the orderly conduct of the proceedings ensuring basic fairness and a full airing of the issues involved. Evidentiary objections shall be waived unless made timely to the hearing.
- (L) Any evidence from a person other than the applicant supporting the granting or denial of an application must be submitted to the office of the Planning Division no less than five (5) days prior to the public meeting. No evidence submitted after the deadline will be considered unless the President finds, at the hearing, that good cause exists to admit additional evidence. If additional evidence is admitted by the Commission after the deadline, the Commission will offer the opportunity to submit responsive evidence or argument prior to making its decision(s) on the related application(s). The applicant shall be entitled to submit evidence at the hearing in response to any evidence submitted by another person, and the Commission may, but shall not be required to, offer additional opportunity to submit evidence.
- (M) In order to schedule available resources and control the effective conduct of the meeting and/or public hearing, any electronic display may be presented to the Commission only if approved by the President at least five (5) business days prior to the hearing. No electronic display of materials will be permitted without prior approval.
- (N) In order to expedite the conduct of the hearing, the President may limit the amount of time which a person may use in addressing the Commission. The President may also limit the

speakers or testimony upon a particular issue in order to avoid repetitious and cumulative evidence.

- (O) The burden of proof of all legal pre-requisites to the action sought will be upon the party requesting such action.

SECTION 4 – VOTING

- (A) After all evidence has been submitted to the Commission, each case shall be heard, considered, and acted upon in public meeting.
- (B) The Commission may grant, grant with conditions, modify so as to make more restrictive, or deny any petition or other matter under consideration.
- (C) The Commission may impose conditions consistent with the provisions of the Planning and Zoning Code of the City of Morgantown.
- (D) By majority vote, the Commission may also defer action on any matter whenever it concludes that additional time for further study is necessary. If continued, any public hearing shall be continued to a date certain, not to exceed sixty (60) days from that date.
- (E) In all cases, the Commission shall state reasons for its decisions and recommendations.
- (F) A majority vote of those Commission members present and voting shall be required to take official action.
- (G) The President shall have the right to vote on all matters before the Commission, and shall have the right to make or second motions in the absence of a motion, or a second, made by a member.
- (H) In the event a majority vote for an official action is not obtained, the matter shall be continued until such time as the Commission is able to obtain a majority vote for official action. The failure of the Commission to obtain a majority on a vote shall not operate as an approval or a denial of an application.
- (I) A member shall disqualify themselves and abstain from voting whenever they have, or may have, a personal or monetary interest in the matter under consideration, or will be directly affected by the decision. When a member must disqualify themselves, they must recuse themselves from any vote, discussion, participation, or other activity regarding the conflicting issue. The determination by a member to abstain from voting on any action before the Commission shall not be counted as either a “yes” vote or a “no” vote, nor shall it be counted in the determination of the majority.
- (J) Each member attending will be entitled to one (1) vote which will be by show of hand. The President may request a voice vote or roll call vote when, in the President’s opinion such is necessary to accurately record each member’s vote. The minutes of the proceedings shall indicate the vote of each member on every matter acted upon, and shall indicate any absence or failure to vote.
- (K) No member shall be excused from voting except on matters involving the consideration of their own official conduct, or such matters as referred to in Section 4 (I) above. In all other cases, a failure of any member to vote shall be entered into the minutes as an affirmative vote.
- (L) The Commission shall vote upon the merit of any petition or other matter under consideration within one-hundred-twenty (120) days from beginning of the public hearing,

unless the application is withdrawn by the applicant. A vote to continue or table the matter under consideration shall not constitute a vote on its merits.

- (M) A motion to adopt or approve staff recommendations or simply to approve the action under consideration shall, unless otherwise particularly specified, be deemed to include adoption of all proposed findings and execution of all actions recommended in the staff report on file in the matter.

SECTION 5 – RECORDING OF MEETINGS

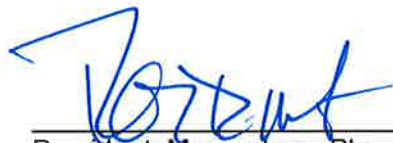
- (A) The Secretary shall see that all public meetings of the Commission are recorded by electronic device.
- (B) Any person desiring to have a meeting recorded by an alternate electronic device or by a stenographic reporter, at their own expense, may do so, provided they consult with Secretary to arrange facilities for such recording prior to the commencement of the meeting, or does not otherwise disrupt the proceedings.

SECTION 6 – RECOMMENDATIONS TO CITY COUNCIL

- (A) On matters pertaining to its advisory capacity to City Council, the Secretary will forward all Commission recommendations to City Council of its findings and/or action(s) in writing following the conclusion of the associated public hearing.
- (B) If a petition requiring enactment by City Council is withdrawn from consideration, with formal consent of the Commission, such action shall not require forwarding to Council.

Adopted:

11 FEB 2016
Date



President, Morgantown Planning Commission



Secretary, Morgantown Planning Commission

EXHIBIT A

Pre-Meeting Announcement read by the President

Good evening and welcome to the regular/special meeting of the City of Morgantown Planning Commission. Please turn off all cell phones or other devices that may disrupt these proceedings. The Planning Commission conducts business in the following order:

- (1) There will be a general public comment portion when anyone who wishes to address the Planning Commission may do so, but only on matters that are not on the agenda. There will be a five (5) minute time limit for speakers. All recognized speakers must approach the podium, state their name and address for the record, and speak clearly into the microphone. Speakers are notified that irrelevant comments or comments of a personal nature or personal attacks may result in the speaker forfeiting their opportunity to participate in the general public comment portion.
- (2) We review, amend, and approve minutes of the previous meeting.
- (3) We consider any Unfinished Business from previous meetings.
- (4) We move on to New Business items. First, we introduce the item and the Planning Division representative presents the Staff Report.
- (5) Next, we ask the petitioner to make a presentation. Planning Commissioners may ask the petitioner questions at that time.
- (6) I will then open a Public Hearing to hear testimony in support of, or in opposition to, the request. Rules regarding public testimony are as follows:
 - (a) Anyone wishing to testify during the public hearing may do so once recognized. Each recognized speaker must approach the podium, state their name and address for the record, and speak clearly into the microphone.
 - (b) All comments must be addressed to the Commission. Speakers are notified that irrelevant comments or comments of a personal nature or personal attacks may result in the speaker forfeiting their opportunity to participate in the public hearing.
 - (c) All speakers will be limited to five (5) minutes. If members of the Commission have any questions of the speaker, that time will not be counted toward the speaker's five (5) minutes.
 - (d) If there is a large number of speakers, including many who are part of groups or organizations, I may, to avoid repetitive comments, elect to ask for a representative to speak on behalf of the group or organization.
 - (e) I may elect to recognize the applicant/agent at the end of the public hearing to provide rebuttal or additional comments, which will be limited to five (5) minutes. If members of the Commission have any questions of the applicant/agent, that time will not be counted toward the applicant's/agent's five (5) minutes.

- (7) After all testimony is heard, I will declare the Public Hearing closed and no further public comment will be permitted. At that time, no one in the audience may speak again unless a Planning Commissioner asks a question. If someone is asked a question, they must come to the microphone and identify themselves once again before answering.
- (8) Next, the Planning Commission will discuss and take action on the application.
- (9) Once the vote is final, members of the audience who were present for that particular case may leave, if they wish. In order not to disrupt the meeting, people who choose to leave must go to the bottom of the stairs before carrying on a quiet discussion.
- (10) Uncivil, unruly, and/or disruptive behavior at any time during this meeting is prohibited and will result in removal from this public meeting.

Thank you for your consideration and respect for these proceedings and the opinions of all meeting participants.

**CITY OF MORGANTOWN, WEST VIRGINIA
PLANNING COMMISSION BYLAWS**

**POLICY ANNEX 2
GUIDANCE IN FAIRNESS AND IMPARTIALITY**

SECTION 1 TYPES OF PUBLIC HEARINGS

SECTION 2 BIAS

SECTION 3 CONFLICT OF INTEREST

SECTION 4 EX PARTE CONTACT

SECTION 5 PERFORMANCE

Adopted: October 11, 2007

Amended: November 13, 2007

 April 8, 2010

 February 11, 2016

SECTION 1 – TYPES OF PUBLIC HEARINGS

There are generally two (2) types of Planning Commission hearings:

- (A) Legislative Public Hearings – The purpose of a legislative public hearing is to obtain public input on legislative decisions on matters of policy and recommendations to City Council. Legislative public hearings are required for such things as amendments to the Planning & Zoning Code, amendments to the Official Zoning Map, comprehensive land use and similar plan recommendations, etc. These public hearings are generally less formal than quasi-judicial public hearings and do not involve the legal rights of specific, private parties in a contested setting, but rather affect a wider range of citizens.
- (B) Quasi-judicial Public Hearings – Quasi-judicial hearings are subject to stricter procedural requirements than legislative hearings as they involve the legal rights of specific parties. As such, decisions made as a result of such hearings must be based upon and supported by the “record” developed at the hearing. Most quasi-judicial hearings include land use matters such as site plans, subdivision plats, conditional uses, variances, etc.

SECTION 2 – BIAS

- (A) “Bias” generally means that a Planning Commissioner is incapable of making a decision on the basis of the evidence and argument presented during a public hearing due largely because Commissioner’s decision is made before the hearing.
- (B) Disqualification based on bias is not obligatory on legislative-type matters or when a Planning Commissioner, who may have a strong view about a particular issue, can put aside such views and make a decision solely on the facts of the case, the evidence presented, and the City’s Planning & Zoning Code.

SECTION 3 – CONFLICT OF INTEREST

- (A) A Planning Commissioner may not vote on or decide a matter that has become “personal” to that individual.
- (B) A matter is considered “personal” to a Planning Commissioner when the Commissioner has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence the Commissioner’s vote or would clearly give the appearance of impropriety.
- (C) An interest is not “personal” if the interest of the Planning Commissioner in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or class.
- (D) There are two conflict of interest types:
 - (1) Actual Conflict – Actual conflict is an action or decision, the effect of which *would* be to a Planning Commissioner’s (or a family member’s) financial benefit or detriment. The obligatory procedure is to disclose the “nature of the conflict” and not take part in the discussion, debate, or decision on the related matter.
 - (2) Potential Conflict – Potential conflict is an action or decision, the effect of which *could* be to a Planning Commissioner’s (or a family member’s) financial benefit or

detriment. The obligatory procedure is to disclose the “nature of the conflict” and then take part in the discussion, debate, or decision on the related matter.

SECTION 4 – EX PARTE CONTACT

- (A) “Ex parte” essential means “on, or in the interests of one side only.”
- (B) “Ex parte contact” occurs when it is taken or granted at the instance and for the benefit of one party only, and without notice to, any person adversely interested, or without the opportunity to rebut.
- (C) To ensure open, equal, and fair deliberation, all sides and the general public must know all of the information that each Planning Commissioner has received which may influence decisions.
- (D) Ex parte contact applies only to quasi-judicial public hearings and not legislative public hearings.
- (E) The obligatory conduct of Planning Commissioners relating to ex parte contact is:
 - (1) Avoid situations and circumstances with parties interested in pending quasi-judicial hearing issues.
 - (2) Avoid discussions relating to pending quasi-judicial hearing issues.
 - (3) When contacted concerning a pending quasi-judicial hearing issue, end the discussion and disclose the contact at the related Planning Commission quasi-judicial hearing by providing the substance of the contact.
- (F) Unlike bias, ex parte contact does not disqualify a Planning Commissioner, but requires disclosure.

SECTION 5 – PERFORMANCE

- (A) Any communication between any party and a Planning Commissioner that may have the appearance of or potential to lead to bias or partiality must be disclosed as soon as possible at the related quasi-judicial hearing.
- (B) Any party to a quasi-judicial proceeding, may challenge the partiality and appearance of fairness of any Planning Commissioner during the hearing. A challenge must include the facts relied on by the challenging party, relating to the Planning Commissioner’s alleged bias, prejudgment, or personal interest, or other basis by which the party has concluded that the Commissioner cannot participate in an impartial manner.
 - (1) In the event of a challenge under this subsection, the challenged Planning Commissioner shall respond in a statement, which shall be part of the record, or step down from participating in the hearing on the matter. The statement shall respond to the challenge and include the reasons why the Commissioner should be allowed to participate.
 - (2) The statement regarding continuing to participate in the hearing shall not be subject to Planning Commission examination but shall be subject to rebuttal by the challenging party.

- (3) In the event of a rebuttal, the Commissioner shall be given an opportunity to respond making special reference to the facts alleged in rebuttal, or shall disqualify themselves and state the reasons therefore.
- (C) For a recusal to be effective, it is necessary for the Commissioner to excuse themselves from the discussion, participation, or other activity regarding the issue by fully disclosing the Commissioner's interest, physically removing themselves from the room during that period, and recusing themselves from voting on the issue.
- (D) If as a result of conflict of interest, ex-parte contact and/or appearance of fairness, a quorum of the entire Planning Commission cannot be assembled for the purposes of conducting a hearing, then the matter relating to the conflict of interest, ex-parte contact and/or appearance of fairness must be tabled and an opinion obtained from the West Virginia Ethics Commission.

Adopted: 11 FEB 2016
Date



President, Morgantown Planning Commission



Secretary, Morgantown Planning Commission